

antagonists, and not to NMDA antagonists as a entire class, which is a point the Office's arguments fail to address.

Accordingly, the Office has not met its burden of demonstrating a prima facie case of lack of unity and must withdraw the lack of unity objection to the claims.

Election of Species Requirement:

Election of a single species of NMDA antagonist for the elected Group is required.

Applicants elect gacyclidine, with traverse.

Applicants traverse as follows. The Office argues that the species are not so linked as to form a single general inventive concept under Rule 13.1. OA at 3.

However, the expression "special technical features" means those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art. PCT Rule 13.2.

Applicants note that the technical feature that fulfills the PCT requirements comprises a drug or agent that modulates glutamate-mediated neurotransmission or sodium channel function without causing significant clinical hearing loss associated with suppression of AMPA receptor-mediated signals. The individual compounds that are listed in claims 6, 9, and 26 are preferred examples of the overall technical feature.

The explanation that Applicants are not claiming NMDA antagonists as an entire class, and the consequent irrelevance of US Patent 5,039,528 in the lack of unity analysis, has been discussed above. That explanation also applies to the election of species requirement. The fact that NMDA antagonists are known does not eliminate the claimed special technical feature.